

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5140 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI N SOLANKI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MS KUSUM M SHAH for Petitioner

MR BP JOSHI for Respondent No. 1, 2, 3 - ABSENT

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 04/11/1999

ORAL JUDGEMENT

The petitioner has challenged the order dated
23rd Sept. 1987 at Annexure "I" to the petition, issued
by the Executive Engineer, Roads and Buildings, Panchayat

Division No.1, Palanpur, terminating his service with effect from 30th Sept. 1987, from the post of work-charge clerk. In view of the interim relief which was granted in terms of paragraph 12(b) and (c) on 30th Sept. 1987 and which has been continued, the petitioner seems to have continued in that post.

According to the petitioner, he was initially appointed on 12.1.1983 as a work-charge clerk in the pay-scale of Rs. 260-400, by an order which is at Annexure "A" to the petition. That order clearly refers to the select list of 1982, on the basis of which the petitioner was appointed alongwith others on a temporary basis as work-charge clerk. The initial appointment was made by the Executive Engineer of the Irrigation Division of the District Panchayat, Palanpur. Thereafter, by order dated 19.9.1983, which is at Annexure "B" to the petition issued by the Executive Engineer, he was posted vice one C.G. Rathod at Danta. However, the Deputy Engineer, Irrigation Sub-division, Danta, did not allow him to resume his duty and informed him that he had moved the Divisional office for giving him posting at some other place. Thus, while he was relieved on 13.9.1983 for resuming at Danta, he was not allowed to resume at Danta and had to remain in a state of suspended animation. He sent an application on 1.10.1983 to the respondent No.3 for giving him a suitable post, without any adequate response from the respondent No.3. As his juniors were continuing, the petitioner approached Gujarat Civil Services Tribunal for reinstatement from 1.10.1983 with consequential benefits. The appeal was however, withdrawn from the Tribunal, in view of the stipulation that his appeal before the District Development Officer would be disposed of within a month. However, he was not given any posting, though a period of three months elapsed and in response to his letter dated 30th May, 1986, he was asked to make a representation to the respondent No.2, which he made, but with no avail. He therefore, filed a writ petition being Special Civil Application No. 5139/86, in which all the respondents were also impleaded. On 24.12.1987, that petition was disposed of on a statement which was made by the learned Counsel appearing for the respondents, who included the District Development Officer as well as the Executive Engineer of the Irrigation Division. The statement which was made on behalf of the respondents was that the petitioner will be given preferential treatment in the matter of reemployment and that his seniority will be reckoned on the basis of the select list of 1981, wherein he was placed at serial No.18. It was stated on behalf of the petitioner by his counsel that the petitioner

would not press for backwages. A statement was also made that a posting order was already given to the petitioner. That order appears to have been made on 14.2.1987. Thus, it came to be crystalised that the petitioner will be continued in service on the basis of his seniority emanating from his position in the select list of 1981. However, within a few months after his reinstatement, his services were again terminated by order dated 23.9.1987, which has been challenged.

The learned Counsel for the petitioner strongly contended that the impugned order of his termination made on 23.9.1987 could not have been made in view of the statement which was made on behalf of the respondents, that the seniority of the petitioner would be reckoned on the basis of the select list of 1981, in which he was at serial No.18 and therefore, the impugned order was illegal and unwarranted.

It has been stated in the petition that five persons who are named in ground (B) on paragraph 8 who were work-charge clerks junior to the petitioner were continued in service, whereas the petitioner was relieved from 30.5.1987 under the impugned order. This fact has not been controverted by the respondents. The petitioner was entitled to continue as work-charge clerk on the basis of his seniority position reflected from the select list of 1981, as per the statement made on behalf of the respondents before this Court in Special C.A No. 5139/86, which was disposed of on the basis of such statement. The impugned order clearly ignores the entitlement of the petitioner of his seniority being reckoned on the basis of the select list of 1981 as work-charge clerk. The Executive Engineer who has made the said order on 23.9.1987 has virtually ignored the order of the High Court by tossing the petitioner to the Irrigation Department. Even if the petitioner was to be sent to the Irrigation Department, his services could not have been terminated by ignoring the statement which was made on behalf of the respondents in Special Civil Application No. 5139/86. The impugned order is therefore, arbitrary and illegal and cannot be sustained. The said order dated 23.9.1987 is hereby set aside and the respondents are directed to treat the entitlement of the petitioner to continue in service on the basis of the statement which was made in Special C.A No. 5139/86 that his seniority will be reckoned on the basis of the select list of 1981, wherein he was placed at serial No.18. Rule is made absolute accordingly with no order as to costs.

* /Mohandas